

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

JOSE TIMOTEO GUEVARA,

Petitioner,

v.

SULLIVAN, et al.,

Respondent.

Case No. [18-cv-03211-VC](#) (PR)

**ORDER OF DISMISSAL**

Petitioner Jose Timoteo Guevara, a state inmate, filed this pro se petition for a writ of habeas corpus under 28 U.S.C. § 2254 and moved for leave to proceed in forma pauperis. On July 2, 2018, the Court issued an order denying the motion to proceed in forma pauperis because Guevara had sufficient funds in his prison trust account to pay the \$5.00 filing fee. The Court also found that his claims were unexhausted. The Court ordered Guevara to pay the \$5.00 filing fee and to notify the Court how he wished to proceed with his unexhausted claims, within 28 days from the date of the Order. The Court gave Guevara two options about proceeding with his unexhausted claims: (1) dismiss the action and return to state court to exhaust all his claims before returning to federal court with his newly exhausted claims in a new petition; or (2) move for a stay of the petition while he exhausted state court remedies. If Guevara did not choose one of the two options or pay the \$5.00 filing fee within 28 days, the Court would assume he chose Option (1) and the action would be dismissed without prejudice to filing a new petition with unexhausted claims.

More than 28 days have passed, and although Guevara has paid the filing fee, he has not

notified the Court about how he wishes to proceed with his unexhausted claims. Therefore, the Court assumes he chose Option 1. This petition is dismissed without prejudice to Guevara filing a new petition when he exhausts his claims.

The Clerk of the Court shall enter a separate judgment and close the file.

**IT IS SO ORDERED.**

Dated: September 11, 2018

A handwritten signature in black ink, appearing to read 'VCH', is written above a horizontal line.

VINCE CHHABRIA  
United States District Judge